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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENN.

PHAN HUE

Plaintiff

v.

JAMES UPDIKE, P.A.

JOSEPH MATALONI,

EDWARD O'BRIAN

DALE HAZLAK

Defendant

Civil

No. 1:CV-01-1064

(Judge Kane)

FILED
SCRANTON

MAR 28 2002

PER

DEPUTY CLERK

MOTION OF ORDER FOR EXAMINATION

PURSUANT TO RULE 35 (a)

Now Comes the plaintiff, Phan Hue, who is acting Pro Se in this matter and respectfully requests this Honorable Court to issue an Order for a physical Examination, and avers the following:

- 1) Phan Hue filed a 42 U.S.C. §1983 action/complaint on June 15, 2001 after he sustained injuries from a fall in the kitchen area at S.C.I. Retreat in Feb. 2000.
- 2) That this Honorable Court has been made aware of the plaintiff's plight to obtain medical treatment(s), to both his shoulder and teeth. On or about the same day of the plaintiff's fall, he was taken to an outside hospital where he was told he should be seen by a bone specialist.

- 3) Phan Hue was never seen by any bone specialist, nor was he ever scheduled to see one.
- 4) In order for this court to get an in depth understanding of the serious nature of his injuries, the court should order a physical examination independent of the medical department of S.C.I. Retreat. Simply, any request or order to have said examination within S.C.I. Retreat, would be a conflict of interest of which the ends of justice would never be met.
- 5) A medical review would show a preponderance of greater evidence of the complainant's claims having substantial merit, to render trial by this court. A rotator cuff is the part of the shoulder that enables the arm to be pulled away from the side of the body. The rotator cuff is made up of four muscles and their four tendons. Over use of the rotator cuff can lead to degeneration and tearing of the tendons. This produces PAIN and WEAKNESS of the shoulder. Larger tears may need for surgical repair.
- 6) The Complainant is unlearned in english and gets bits of help from people who speak english. Phan Hue did not write out his request forms. He did not know how

to ask for care from the defendant's. And the grievance was done by another inmate. Phan Hue's reading and writing is of 3.6 years of education. Far impossible to control his matters in court. Another doctors opinion will satisfy a non frivolous §1983 claims. Marks v. Sokum, 98 F.3d 494: I.F.P. provision that calls for appeal to be dismissed if they are frivolous or malicious, or fail to state a claim upon which relief may be granted, is applicable to appeals pending at the time of the P.LRA's passage. Phan Hue's goals are to secure legal and relevant evidence to support his claims. The need for an operation. Permanent damage to his shoulder, the pain heendured. He has never gotten proper professional medical treatment yet. To this date your Honor. A medical diagnoses will show proof for which will be needed to justify the judgement. The whole story will clear up with the proper evaluation of the existence of needed medical treatment. When Phan Hue fell, he fell in a very awkward way in which ripped certain muscles and tendons in his shoulder.

- 7) Patten vs. Nidnols, 274 F.3d 829. The court therefore adopted chief Judge Seitz's view that "the constitution only requires that the courts make **certain** that professional judgement in fact was exercised." That a decision, if made by a professional is presumptively

valid, a liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgement, practice, or standards as to demonstrate that the person responsible actually did not base his decision on such a judgement. Id. at 323, 102 S.Ct. 2452. An inquiry is needed by an outside physician, namely, a "Bone Specialist."

- 8) Stone vs. Powell, 96 S.Ct. 3050, for the court would not bar assertion of the Fourth Amendment Claims on Habeas Corpus if the [428 U.S. 514] defendant was not afforded an "OPPORTUNITY" for a full and fair litigation. See **Exhibits** in motion of opposition by complainant. Also see **Exhibit** of newspaper article on "Mr. Langyel" Inmate Grievance Coordinator who was remove from this institution on March 6, 2002 and has not yet returned. Mr. Langyel was removed for down loading Pornographic "Adult and Child" from the internet. This goes to Mr. Langyel's credibility and characteristics, in which hampered the exhaustion under §1997 c(a). Hue has only been completely honest at every angle of justice.

CONCLUSION

Wherefore, the plaintiff prays that this Honorable Court seeks justice and orders that Mr. Phan Hue be examined by a bone specialist, who is independent and is not employed by S.C.I. Retreat.

State prison employees target of investigation

Sources said at least one person allegedly downloaded photos at the prison and sent them along to at least one other employee.

By DAVID WEISS
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NEWPORT TWP. — An internal investigation of at least two employees at the State Correctional Institution at Retreat has been launched, sources said.

The sources said the investigation revolves around questionable material allegedly downloaded from the Internet at the prison.

State Department of Corrections spokesman Mike Lukens was tight-lipped about the incident Monday. But he con-

firmed an internal investigation began in the middle of last week.

Because the investigation is internal, police have not been contacted thus far and information about the investigation remains confidential. Lukens said the investigation involves only one person, though sources said least one employee downloaded pictures and passed them along to one or more people.

Superintendent Ed Klem on Monday said he could not release details of the investigation.

"We have to be careful when doing an investigation on employees," Klem said.

Sources said one employee was told to leave the prison or was escorted from the prison last week.

A memo was later issued that forbade that employee from entering prison property, a source said.

Questioned about the employee's status Monday, Klem said the employee was still on the payroll. He would not answer whether the employee was allowed on the property.

Lukens said there is no time frame on when the internal investigation will be completed. Once completed, officials will decide what type of action is appropriate, Lukens said.

State police at Shickshinny on Monday said they are not involved in the investigation.

David Weiss, a Times Leader staff writer, can be reached at 831-7397.

3/6/02

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	:		
v.	:	(Judge Kane)	
	:		
JAMES UPDIKE, P.A.	:		
JOSEPH MATALONI,	:		
EDWARD O'BRIAN	:		
DALE HAZLAK	:		
Defendant	:		

CERTIFICATE OF SERVICE


I, Phan Hue, does swear that I sent via the U.S. mail, first class, this **MOTION OF ORDER FOR EXAMINATION PURSUANT TO RULE 35(a)** on the date given below and to the following parties.

Gold, Butkivity and Robins, PC
7837 Old York Road
Elkins Park, PA 19027

Marsha M. Davis
Office of Chief Counsel
55 Utley Drive
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U.S. District Court
Clerk of Courts
235 N. Washington Ave.
Scranton, PA 18501

Respectfully submitted,


Phan Hue

Dated: 3-25-02

660 State Route 11
Hunlock Creek, PA 18621